

**FILED**  
Clerk  
District Court

**JUL 12 2007**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

GUIHUA BAI,

Plaintiff,

vs.

GINTIAN CORPORATION, et. al,

Defendants.

Case No. CV-07-0016

**ORDER:**

**1) DENYING DEFENDANTS' MOTION  
TO DISMISS; and  
2) GRANTING IN PART AND DENYING  
IN PART DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**THIS MATTER** came before the court on July 12, 2007, on defendants' motion to dismiss. Stephen J. Nutting appeared on behalf of the plaintiff; G. Anthony Long appeared on behalf of the defendants.

**THE COURT**, having considered the arguments of the parties, **DENIES** the defendants' motion to dismiss and **GRANTS IN PART AND DENIES IN PART** the defendants' motion for partial summary judgment.

**I. MOTION TO DISMISS**

Under Federal Rule of Civil Procedure 12(b)(6), "[a] complaint should not be dismissed . . . 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."

*Id.*

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1 Accordingly, the defendants' motions to dismiss the plaintiff's claim for minimum wage  
2 under the Fair Labor Standards Act ("FLSA") and the plaintiff's claim for FLSA retaliation is  
3 **DENIED** as moot as the court finds no such claim in the complaint and the plaintiff asserts that she  
4 has made no such claim.

## 5 6 **II. MOTION FOR SUMMARY JUDGMENT**

7 Pursuant to Federal Rule of Civil Procedure 56(c), the court may enter summary judgment "if  
8 the pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
9 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving  
10 party is entitled to a judgment as a matter of law." "[S]ummary judgment will not lie if the dispute  
11 about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a  
12 verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The  
13 moving party has the burden of establishing that there is no genuine issue of material fact. *British*  
14 *Airways Bd. v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). "Credibility determinations, the  
15 weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not  
16 those of a judge, [when] ruling on a motion for summary judgment . . . ." *Anderson*, 477 U.S. at 255.  
17 "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in  
18 his favor." *Id.* Once the moving party has met this burden, the opposing party "must set forth  
19 specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

20 The defendants argue that the plaintiff's claim under the MWHHA for minimum wages and  
21 overtime compensation that accrued more than six months from the date of filing the amended  
22 complaint is barred by 4 CMC § 9246. The statute, however, provides for a one year statute of  
23 limitations for willful violations. Accordingly, the court **GRANTS** partial summary judgment to the  
24 plaintiff's claim under the MWHHA for minimum wage and overtime compensation that accrued

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1 more than one year before the filing of the amended complaint. The court notes, however, that this  
2 does not bar the plaintiff's claim for breach of contract or any alternative remedies.

3 **IT IS SO ORDERED.**

4 **DATED** this 12 th day of July, 2007.

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7 ALEX R. MUNSON  
8 U.S. District Court Chief Judge  
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